

Head Office

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[Date]

[Company Name]
[Street Address]
[City, Province Postal Code]

Attention: [Recipient Name]

delivered via email

Re: IO Vendor Performance Program – Monthly Report for [Company Name] (the “**Company**”)

Dear [Recipient Name]:

In March 2020, Infrastructure Ontario updated its vendor past performance program (the “**Vendor Performance Program**”, or “**Program**”). This Program superseded past versions and applies to both Public-Private Partnership (“P3”) and Design-Bid Build (“DBB”) projects. In September 2020, the Program was updated once more. This update extends Program application to those vendors providing Security Consulting services as well as those operating as Service Providers on P3 Projects within the Maintenance Phase.

Unless otherwise explicitly defined herein, all capitalized terms herein have the definitions given to them in the Program. A copy of the Program can be found [here](#).

The Vendor Performance Program’s goals are to ensure the public interest is maintained by monitoring, tracking and holding vendors accountable for performance Infractions during the construction phase of a project. We will apply performance data in a fair and transparent manner to vendors’ participation in future IO and PMSP Procurement Processes.

You are receiving this Monthly Report because your Company is an active VPP Participant who satisfies the conditions for such receipt pursuant to Appendix F of the Program. In accordance with the Program, your Company has been assessed against specific contract criteria, each of which constitute a discrete performance Infraction. Below you will find the Company’s aggregated performance record, including all Transposed Infractions.

As of [Date 1: Month Day, Year], the total number of Infractions accumulated and recorded on Ongoing Contracts preceding [Date 1: Month Day, Year] in which the Company has participated as a Construction Contractor is ONE (1) and as a General Contractor is ZERO (0).

As of the dates outlined above, the Company’s aggregated and transposed Infraction record for the purposes of P3 RFQs is ONE (1) and for all DBB procurements is ONE (1).

A detailed summary of the performance criteria and the Company’s infraction record with respect to all projects is shown in Appendices A and B to this letter. If you believe there is an administrative error regarding the tabulation of performance infractions please contact vpp@infrastructureontario.ca. Any dispute in respect of an administrative or clerical error shall be resolved only with respect to such error. In all other circumstances for the purposes of this program, the recording of infractions and application of deductions against the Company is not eligible for dispute.

As a result of the Company's performance Infraction record and to the extent that the Company seeks:

- i) To prequalify as an Applicant construction Prime Team Member and/or General Contractor under an IO RFQ; and/or**
- ii) Award of a Contract for General Contracting services under a PMSP Procurement Process**

IO, or its Project Management Service Providers, will automatically deduct, from any Company Submission to the above submitted and received between [Date 2: Month Day, Year] and [Date 3: Month Day, Year [NTD: Dates 2 and 3 shall be the beginning and end of the next month in which Date 1 occurs] inclusive, the following number of points:

For IO Procurement Processes:

- [U]% for a Design-Bid-Build RFQ
- [V]% for a Build-Finance RFQ
- [W]% for a Design-Build-Finance RFQ
- [X]% for a Design-Build-Finance-Maintain RFQ (Social/Building Infrastructure Asset Class)
- [Y]% for a Design-Build-Finance-Maintain or Design-Build-Finance-Operate-Maintain RFQ (Civil Transit/Transportation Asset Class)

For PMSP Procurement Processes:

- [Z]% for a PMSP Second-Stage Request or Bid Call

Refer to Section 5.2 of the Program for an explicit outline of deductions as they relate to the evaluation of Submissions.

Infractions will be reviewed and updated by IO on a monthly basis. Deductions based on Infractions will apply until such time as the Infractions expire per Appendix F of the Program. Point deductions will be applied in accordance with the calibration table as disclosed in Appendix C. The calibration table in Appendix C has been developed using a data-driven statistical model which was built using scoring data from all IO RFQs in all asset classes since 2008 and from PMSP SSRs since 2019. Further questions regarding the mathematical inputs that contributed to the calibration model can be directed by email to: ypp@infrastructureontario.ca.

If the Company has elected to enter into a joint venture or partnership with any other construction contractor, the deduction applied to the joint venture/partnership Construction Prime Team Member in the applicable RFQ will be the weighted average (by joint venture or partnership interest) of the deductions applicable against all members of the joint venture/partnership. The formula to calculate the deduction is as follows:

$$\text{Construction Prime Team Member Deduction} = \sum_{i=1}^n JVI_i D_i$$

Where JVI_i is the joint venture or partnership interest of a company, and D_i is that company's P3 Vendor Performance Program deduction.

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**Infrastructure
Ontario**

*For example, if as of March 1, 2018, Contractor ABC's point deduction for Build-Finance RFQs is minus 2.0% (based on having accumulated two infractions in the last 24 months) and Contractor XYZ does not have any record of infractions (and thus a 0% deduction), and Contractor ABC and XYZ are in a 50/50 joint venture bidding to an RFQ, then for any prequalification submission received up until April 30, 2018 in which Contractor ABC and Contractor XYZ are acting as 50/50 joint venture partners, the total deduction applied to the score of the joint venture will be **minus 1.00% of the Construction Team Member Capability and Experience available points**, according to the pre-disclosed calibration table.*

Please also note that if the Company enters into a joint venture or partnership with another construction contractor and ultimately is the successful winning vendor under that procurement, any performance infractions that occur on the project will be equally recorded against the individual performance record of all constituent members of the joint venture or partnership.

More information regarding the purpose, objectives, design, methodology and administration of the Vendor Performance Program is available [here](#).

Yours truly,

[SIGNED]

Senior Vice-President, Procurement
Infrastructure Ontario

APPENDIX A – Detailed Company Construction Contractor Infraction Record as of [Date 1: Month Day, Year]

Infraction Criteria (Numbers per Appendix B of the Program)	Applicable to DBB Procurements	Project A	Project B	Project C
1. The Contracting Authority has exercised remedial rights due to a Vendor breach of Contract.	Not Applicable			
2. The Contracting Authority has sought indemnification under the Contract which is due to a Vendor breach of Contract.	Not Applicable			
3. The Contracting Authority has made a direct claim for, or set off of, proceeds from payments due as a result of a Vendor breach of Contract.	Applicable			
4. The Contracting Authority has issued a notification to the Vendor stating that the Work has been performed in a manner that will result in the Vendor being unable to meet completion requirements.	Applicable		Date: 2018.12.14 Expiry: 2020.12.14 Description: X	
5. The Contracting Authority has exercised its right to uncover work and said work has been found to be defective.	Applicable			

Infraction Criteria (Numbers per Appendix B of the Program)	Applicable to DBB Procurements	Project A	Project B	Project C
6. The Contracting Authority has had to remedy defective work attributable to the Vendor.	Not Applicable			
7. Pursuant to its legislative or regulatory power, a Governmental Authority has issued an order to the Vendor which has resulted in a follow-on notice of violation, fine, or other disciplinary action against the Vendor.	Applicable			
8. The Contracting Authority has drawn upon deposited or withheld amounts in respect of the rectification of Minor Deficiencies.	Applicable			
9. The Contracting Authority has enforced against and/or drawn upon performance security.	Applicable			
10. The Contracting Authority has requested a rectification plan and the Vendor has failed to deliver said plan in a timely manner.	Applicable			

Infraction Criteria (Numbers per Appendix B of the Program)	Applicable to DBB Procurements	Project A	Project B	Project C
11. The Contracting Authority has requested a rectification plan and the plan delivered by the Vendor fails to meet the prescribed requirements of such plan.	Applicable			
12. The Vendor has failed to deliver the Project in a timely manner.	Applicable			
13. The Project was delivered later than that date set out by the first Substantial Completion Countdown Notice.	Not Applicable			
14. Vendor personnel were not made available to perform their agreed upon role.	Applicable			
15. Vendor personnel were substituted without obtaining prior written consent of the Contracting Authority.	Applicable			
16. Recommendations to rectify health and safety infractions have not been implemented or addressed in a timely manner.	Applicable			
TOTAL COUNT OF INFRACTIONS	1		1	

APPENDIX B – Detailed Company General Contracting Infraction Record as of [Date 1: Month Day, Year]

Infraction Criteria (Numbers per Appendix B of the Program)	Applicable to P3 Procurements	Project D	Project E	Project F
<p>3. The Contracting Authority has made a direct claim for, or set off of, proceeds from payments due as a result of a Vendor breach of Contract.</p>	<p align="center">Applicable</p>			
<p>4. The Contracting Authority has issued a notification to the Vendor stating that the Work has been performed in a manner that will result in the Vendor being unable to meet completion requirements.</p>	<p align="center">Applicable</p>			
<p>5. The Contracting Authority has exercised its right to uncover work and said work has been found to be defective.</p>	<p align="center">Applicable</p>			
<p>7. Pursuant to its legislative or regulatory power, a Governmental Authority has issued an order to the Vendor which has resulted in a follow-on notice of violation, fine, or other disciplinary action against the Vendor.</p>	<p align="center">Applicable</p>			

Infraction Criteria (Numbers per Appendix B of the Program)	Applicable to P3 Procurements	Project D	Project E	Project F
8. The Contracting Authority has drawn upon deposited or withheld amounts in respect of the rectification of Minor Deficiencies.	Applicable			
9. The Vendor's performance security has been enforced against and/or drawn upon.	Applicable			
10. Contracting Authority has requested a rectification plan and the Vendor has failed to deliver said plan in a timely manner.	Applicable			
11. Contracting Authority has requested a rectification plan and the plan delivered by the Vendor fails to meet the prescribed requirements of such plan.	Applicable			
12. The Vendor has failed to deliver the Project in a timely manner.	Applicable			
14. Vendor personnel were not made available to perform their agreed upon role.	Applicable			

Infraction Criteria (Numbers per Appendix B of the Program)	Applicable to P3 Procurements	Project D	Project E	Project F
15. Vendor personnel were substituted without obtaining prior written consent of the Contracting Authority.	Applicable			
16. Recommendations to rectify health and safety infractions have not been implemented or addressed in a timely manner.	Applicable			
17. The Vendor has failed to notify the Contracting Authority of critical discoveries in a timely manner.	Not Applicable			
18. The Vendor has been notified of necessary work within the Warranty period and failed to complete such work.	Not Applicable			
19. The Vendor has failed to notify the Contracting Authority of a critical health and safety incident within prescribed timelines.	Not Applicable			
20. The Vendor has failed to deliver closeout documents in a timely manner.	Not Applicable			

Infraction Criteria (Numbers per Appendix B of the Program)	Applicable to P3 Procurements	Project D	Project E	Project F
21. The Vendor has failed to adhere to the security protocols necessary to perform the work.	Not Applicable			
22. The Vendor failed to deliver a baseline schedule within a timely manner.	Not Applicable			
TOTAL COUNT OF INFRACTIONS	0	0		

Infraction Criteria Reference	Construction Prime Team Member Annotations	General Contractor Annotations
All	Any Contracting Authority exercise of rights will occur under, and in accordance with, the governing Contract.	
Criterion No. 1	<ul style="list-style-type: none"> a. This criterion is only recorded in respect to the “Remedial Rights” section of a Project Agreement. b. No infraction shall be recorded on account of this criterion where the exercise of a Remedial Right falls under the definition of a “Reimbursement Event” under a Project Agreement. 	N/A
Criterion No. 2	<ul style="list-style-type: none"> a. An Infraction will be assessed if the claim for indemnification by Contracting Authority exceeds \$100,000. 	N/A
Criterion No. 3	<ul style="list-style-type: none"> a. An Infraction will be assessed if the claim or set-off amount by Contracting Authority exceeds \$100,000. b. No Infraction shall be recorded should the underlying matter relate to Contracting Authority’s exercise of indemnification rights. c. No infraction shall be recorded as a result of the requirement of a contractor to pay liquidated damages to Contracting Authority due to the failure to achieve Substantial Completion by the Scheduled Substantial Completion Date. 	<ul style="list-style-type: none"> a. An Infraction will be assessed if the claim or set-off amount is greater than \$50,000 or 8% of the Contract Price, whichever is less. b. No Infraction shall be recorded should the underlying matter relate to Contracting Authority’s exercise of indemnification rights.

Infraction Criteria Reference	Construction Prime Team Member Annotations	General Contractor Annotations
Criterion No. 4	<ul style="list-style-type: none"> a. Notification will be issued pursuant to the Proceeding at Risk protocol of the Contract. b. The completion requirements will be those defined by Substantial Completion as set out in the Contract. c. No Infraction shall be recorded until such time as the Independent Certifier (DBF, DBFM, or DBFOM) or Consultant (BF) has opined that the completion requirements are at risk. 	<ul style="list-style-type: none"> a. The completion requirements will be those defined by Substantial Performance of the Work per the Contract. b. No Infraction shall be recorded until such time as the Consultant has opined that the completion requirements are at risk.
Criterion No. 5	None.	None.
Criterion No. 6	<ul style="list-style-type: none"> a. No Infraction shall be recorded for Contracting Authority's remediation of Minor Deficiencies. 	N/A
Criterion No. 7	None.	None.
Criterion No. 8	None.	None.
Criterion No. 9	<ul style="list-style-type: none"> a. An Infraction will be assessed if the enforced amount exceeds \$100,000. 	None.

<p>Criterion No. 10</p>	<p>a. This criterion is not related to, and no infraction shall be recorded on account of, general review of works schedules pursuant to the “Review Procedure” or the “Work Scheduling Requirements” schedules to a Project Agreement or any other general request for a works schedule that is not part of the “failure to maintain schedule” section of a Project Agreement.</p> <p>Multiple infractions, as a general matter, will not be recorded in respect of the same failure to provide a requested rectification plan pursuant the "failure to maintain schedule" provisions of a Project Agreement.</p> <p>If, however:</p> <ul style="list-style-type: none"> i. Contracting Authority makes a second request for a rectification plan pursuant the prescribed requirements of the failure to maintain schedule" provisions of a Project Agreement, either after a resolution of the previous rectification plan or relating to a materially different set of circumstances that has caused a project to fall behind schedule, and the construction contractor fails to deliver such rectification plan; or ii. the contractor, in response to a rectification plan request delivers a plan that did not meet the prescribed requirements of a Project Agreement, 	<ul style="list-style-type: none"> a. Infractions shall not be recorded at a rate exceeding once per forty-five calendar days. b. No Infraction shall be recorded for plans received within five (5) Working Days from the date of the request.
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Infraction Criteria Reference	Construction Prime Team Member Annotations	General Contractor Annotations
	<p>provides another response that still does not meet the prescribed requirements of a Project Agreement, then in each case of a non-responsive or unsatisfactory rectification plan that does not meet the requirements of a Project Agreement, an additional infraction will be recorded in respect of each additional failure up to a maximum rate of once per calendar year quarter.</p> <p>b. No Infraction shall be recorded for plans delivered within a timeframe twice the length of that prescribed by the Contract.</p>	
Criterion No. 11	See Annotation No. 10(a) for Construction Contractors.	See Annotation No. 10(a) for General Contractors.

Infraction Criteria Reference	Construction Prime Team Member Annotations	General Contractor Annotations
<p>Criterion No. 12</p>	<ul style="list-style-type: none"> a. No infraction shall be recorded until all claims related to Delay Events have been finally resolved. b. Timeliness shall be determined against the Scheduled Substantial Completion Date per the Contract. c. Timelines shall be reconciled against resolved Delay Events and any adjustment of the Scheduled Substantial Completion Date in accordance with the Project Agreement. d. An Infraction will be assessed if Substantial Completion is reached more than ninety (90) days following the Scheduled Substantial Completion Date. 	<ul style="list-style-type: none"> a. No Infraction shall be recorded until all claims affecting Contract Time have been finally resolved. b. The date Substantial Performance of the Work is achieved shall be the date used for determining project delivery. c. Timelines shall be reconciled against any and all adjustment of Contract Time. d. An Infraction will be assessed if Substantial Performance is reached more than twenty (20) Working Days following the date stipulated by the Contract for Substantial Performance.

Infraction Criteria Reference	Construction Prime Team Member Annotations	General Contractor Annotations
<p>Criterion No. 13</p>	<ul style="list-style-type: none"> a. No Infraction shall be recorded until all claims related to Delay Events have been finally resolved. b. The Scheduled Substantial Completion Date shall be the date used for determining project delivery. c. Timelines shall be reconciled against resolved Delay Events and any adjustment of the Scheduled Substantial Completion Date in accordance with the Project Agreement. d. No Infraction shall be recorded in the event that Substantial Completion is achieved within fifteen (15) calendar days of the Anticipated Substantial Completion Date specified in the Notice. 	<p>N/A</p>

Infraction Criteria Reference	Construction Prime Team Member Annotations	General Contractor Annotations
Criterion No. 14	<p>a. Death, injury, departure, dismissal, or other removal of a Key Individual does not automatically result in an Infraction to be recorded under this criterion. However, in all cases, consent must be obtained for any replacement or substituted Key Individual in accordance with a Project Agreement.</p>	<p>a. Infractions shall only be recorded if the Vendor's appointed representatives have been substituted.</p> <p>b. Death, injury, departure, dismissal, or other removal of an appointed representative does not automatically result in an Infraction to be recorded under this criterion. However, in all cases, consent must be obtained for any replacement or substituted appointed personnel in accordance with a Contract.</p>
Criterion No. 15	See Annotation No. 14 for Construction Contractors.	See Annotation No. 14 for General Contractors.
Criterion No. 16	<p>a. Such recommendations shall be the result of independent health and safety inspection reports.</p> <p>b. How health and safety matters are addressed by Vendors will be taken into consideration in determining whether an Infraction has occurred.</p>	<p>a. Such recommendations shall be the result of:</p> <ul style="list-style-type: none"> i. Independent health and safety inspection reports; or ii. Inspections conducted by PMSP personnel designated to conduct such inspections. <p>b. How health and safety matters are addressed by Vendors will be taken into consideration in determining whether an Infraction has occurred.</p>

Infraction Criteria Reference	Construction Prime Team Member Annotations	General Contractor Annotations
Criterion No. 17	N/A	<ul style="list-style-type: none"> a. Such discoveries may include materials, substances, articles, species, or structures of an environmental, archeological, toxic, hazardous, or heritage nature. b. No Infraction shall be recorded for those items brought to the Place of the Work by the Vendor, provided said items were disclosed to Contracting Authority in accordance with the Contract. c. Timeliness of the notification shall be taken into consideration in determining whether an Infraction has occurred.
Criterion No. 18	N/A	<ul style="list-style-type: none"> a. No Infraction shall be recorded until the warranty period has elapsed.
Criterion No. 19	N/A	<ul style="list-style-type: none"> a. No Infraction shall be recorded should such damage or injury occur. b. An Infraction will be assessed if more than two (2) calendar days elapse between the incident and the Vendor's notification to Contracting Authority. c. Criticality shall be determined by Infrastructure Ontario, acting in its sole discretion.

Infraction Criteria Reference	Construction Prime Team Member Annotations	General Contractor Annotations
Criterion No. 20	N/A	a. An Infraction will be assessed if more than fifty (50) calendar days elapse between Substantial Performance of the Work or the Vendor's final application for payment (whichever is earlier) and the complete delivery of documents.
Criterion No. 21	N/A	a. No Infraction shall be recorded as a result of an individual being denied security clearance. b. No Infraction shall be recorded for access required for the Vendor's participation in the SSR Process.
Criterion No. 22	N/A	a. An Infraction will be assessed if more than fifteen (15) Working Days elapse between the date of the Letter of Award and the delivery of the baseline schedule.

APPENDIX B – Point Calibration Deduction Table Effective May 4, 2021

Delivery Model	DBB				P3											
	PMSP Procurement Processes		IO Procured Request for Qualifications		BF		DBF		DBFM (Social)			DBFM (Civil)				
Construction Points or Equivalent	Range: 30		Range: 100		Range: 90 95		Range: 40		Range: 20 30			Range: 25 30				
Number of Infractions	Deduction from Company's Submissions															
1	1.0%	0.3	1.0%	1.0	1.0%	0.9	.95	1.0%	0.4	1.0%	0.2	0.3	1.0%	0.25	0.3	
2	1.8%	0.5	1.4%	1.4	1.3%	1.1	1.2	1.5%	0.6	2.0%	0.4	0.6	2.1%	0.5	0.6	
3	3.3%	1.0	2.2%	2.2	1.8%	1.6	1.7	2.6%	1.0	4.1%	0.8	1.2	4.4%	1.1	1.3	
4	5.7%	1.7	3.9%	3.9	2.5%	2.3	2.4	4.2%	1.7	7.3%	1.5	2.2	7.7%	1.9	2.3	
5	11.9%	3.6	6.4%	6.4	4.2%	3.8	4.0	8.5%	3.4	14.0%	2.8	4.2	15.0%	3.8	4.5	
6	14.5%	4.3	11.2%	11.2	8.2%	7.4	7.8	10.0%	4.0	16.1%	3.2	4.8	17.0%	4.2	5.1	
7	19.6%	5.9	21.1%	21.1	16.2%	14.6	15.4	16.8%	6.7	20.3%	4.1	6.1	20.9%	5.2	6.3	
8 or more	31.1%	9.3	36.4%	36.4	34.2%	30.8	32.5	32.3%	12.9	29.8%	6.0	8.9	29.9%	7.5	9.0	